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50

| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/084,105  | 02/27/2002  | Andrew Phelps        | 5181-97700          | 6781             |
| 7590  | 03/08/2005  |                      | EXAMINER            |                  |
| B. Noel Kivlin<br>Conley, Rose, & Tayon, P.C.<br>P.O. Box 398<br>Austin, TX 78767 |             |                      | CHU, GABRIEL L      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 2114                |                  |

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|------------------------------|------------------------|---------------------|--|
|                              | 10/084,105             | PHELPS, ANDREW      |  |
| Examiner                     | Art Unit               |                     |  |
| Gabriel L. Chu               | 2114                   |                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 13 December 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1,3-16 and 18-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,3-16 and 18-32 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 20050113.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 3-16, 18-32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/254413 (referred to herein as 413). Although conflicting claims 1, 3-5, 8, 15, 16, 18-20, 23, 30-32 are not identical, they are not patentably distinct from each other because the memory module of 413 operates as a part of a memory subsystem, wherein the received memory requests are a product of a controlling apparatus for the memory module.

Although 413 does not specifically claim the limitations of claim 6, 21, Examiner takes official notice for an error code. A person of ordinary skill in the art at the time of the invention would have been motivated to return an error code because it helps to identify an error.

Although 413 does not specifically claim the limitations of claim 7, 22, Examiner

takes official notice for not writing. A person of ordinary skill in the art at the time of the invention would have been motivated to not write faulty data because it is faulty.

Although 413 does not specifically claim the limitations of claim 9, 24, Examiner takes official notice for buffering memory access requests. A person of ordinary skill in the art at the time of the invention would have been motivated to buffer memory access because memory is a limited resource.

Although 413 does not specifically claim the limitations of claim 10-13, 25-28, Examiner takes official notice for a cache dump. A person of ordinary skill in the art at the time of the invention would have been motivated to perform a cache dump because it aids in determining an error.

Although 413 does not specifically claim the limitations of claim 14, 29, Examiner takes official notice for an interrupt in response to an error. A person of ordinary skill in the art at the time of the invention would have been motivated to send an interrupt to a debugger in response to an error because it facilitates debugging.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Allowable Subject Matter***

3. Claims 1, 3-16, 18-32 are objected to as being rejected under nonstatutory provisional double patenting, but would be allowable, as previously indicated, if accompanied by a timely filed terminal disclaimer, as indicated above.

#### ***Conclusion***

Art Unit: 2114

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 5182752 to DeRoo et al.

US 5944843 to Sharma et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gabriel L. Chu whose telephone number is (571) 272-3656. The examiner can normally be reached on weekdays between 8:30 AM and 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel, Jr. can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

gc

Bryce P. Bongo  
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Primary Examiner  
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